

AMENDED IN SENATE APRIL 15, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 540

Introduced by Senator Hertzberg

February 26, 2015

An act to amend and repeal Section 21004 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 540, as amended, Hertzberg. Franchise Tax Board: Taxpayers' Rights Advocate.

The Katz-Harris Taxpayers' Bill of Rights Act establishes the position of Taxpayers' Rights Advocate and provides specified protections for taxpayers for purposes of, among other things, determining their correct tax liability. Existing law, until January 1, 2016, authorizes the Taxpayers' Rights Advocate to abate penalties, fees, additions to tax, or interest attributable to error of *or unreasonable delay caused by* the Franchise Tax Board, as specified. Existing law requires any relief granted in which the total reduction exceeds \$500, as adjusted, to be submitted to the executive officer of the board for concurrence, and limits the total relief granted to \$7,500, as adjusted. *Existing law authorizes relief to be granted only if no significant aspect of the board's error or delay is attributed to the taxpayer, as provided.*

~~This bill would, bill, on and after January 1, 2016, instead authorize~~
~~would instead require the Taxpayers' Rights Advocate, in coordination~~
~~with the Chief Counsel of the Franchise Tax Board Board, to abate~~
~~penalties, fees, additions to tax, or interest attributable to error of~~
~~*or unreasonable delay caused by* the Franchise Tax Board, remove the~~
~~limit on the amount of relief that may be granted and the adjustment~~

provision relating to that amount, and specify the retention period for records of relief granted by the chief counsel. *The bill would require the advocate and the board to provide relief to the taxpayer only if no significant aspect of the board's error or delay is attributed to the taxpayer.*

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21004 of the Revenue and Taxation Code,
2 as amended by Section 1 of Chapter 349 of the Statutes of 2012,
3 is amended to read:

4 21004. (a) The board shall establish the position of the
5 Taxpayers' Rights Advocate. The advocate or his or her designee
6 shall be responsible for coordinating resolution of taxpayer
7 complaints and problems, including any taxpayer complaints
8 regarding unsatisfactory treatment of taxpayers by board
9 employees. The advocate shall report directly to the executive
10 officer of the board.

11 (b) The advocate or his or her designee shall give highest priority
12 to reviewing and taking prompt and appropriate action, including
13 staying actions where taxpayers have suffered or will suffer
14 irreparable loss as the result of board action. Applicable statutes
15 of limitation shall be tolled during the pendency of a stay. Any
16 penalties and interest which would otherwise accrue shall not be
17 affected by the granting of a stay.

18 (c) (1) On and after January 1, 2016, *the Taxpayers' Rights*
19 *Advocate, in coordination with the Chief Counsel of the Franchise*
20 ~~Tax-Board may Board,~~ *shall* provide relief pursuant to this
21 subdivision and abate any penalties, fees, additions to tax, or
22 interest assessed if it is determined ~~by the Chief Counsel of the~~
23 ~~Franchise Tax-Board~~ that the penalties, fees, additions to tax, or
24 interest that have been assessed, or any part thereof, is attributable
25 to any of the following:

26 (A) Erroneous action or erroneous inaction by the board in
27 processing documents filed or payments made by taxpayers.

28 (B) Unreasonable delay caused by the board.

29 (C) Erroneous written advice that does not qualify for relief
30 under Section 21012.

(2) Relief ~~may~~ *shall* be granted pursuant to this subdivision only if no significant aspect of that error or delay can be attributed to the taxpayer involved and relief is not available under any other provision of this part, Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), or Part 11 (commencing with Section 23001), including any relief granted under any regulation or other administrative pronouncement of the board.

(3) (A) Any relief granted pursuant to this subdivision in which the total reduction in penalties, fees, additions to tax, or interest exceeds five hundred dollars (\$500) shall be submitted to the executive officer for concurrence.

(B) Whenever relief is granted under this subdivision, there shall be placed on file for at least one year in the office of the executive officer of the board a public record with respect to that relief. The public record shall include the following:

(i) The taxpayer's name.

(ii) The total amount involved.

(iii) The amount payable or refundable due to the error or delay.

(iv) A summary of why the relief is warranted.

(4) A refund may be paid as a result of relief granted under this subdivision only if the applicable statute of limitations, with respect to filing a claim for refund, remains open as of the date that the basis for providing relief, as authorized in subparagraphs (A) to (C), inclusive, of paragraph (1), as determined by the board.

(d) No other entity may participate in the grant or denial of relief pursuant to this section.

(e) Notwithstanding any other law or rule of law, all determinations made under paragraph (1) of subdivision (c) shall not be subject to review in any administrative or judicial proceeding.

(f) (1) The amendments made by Section 1 of Chapter 349 of the Statutes of 2012 shall become operative on January 1, 2013.

(2) The amendments made by the act adding this paragraph shall become operative on January 1, 2016.

SEC. 2. Section 21004 of the Revenue and Taxation Code, as added by Section 2 of Chapter 349 of the Statutes of 2012, is repealed.